IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

Regular Second Appeal No.309 of 1995

Date of decision: 7.05.2007

Gian Chand **Appellant**

Versus

State of H.P. **Respondent**

Coram

The Hon'ble Mr.Justice Surjit Singh, J.

Whether approved for reporting ?[1] *yes*

For the appellant: **Mr. K.D. Sood, Advocate.**

For the Respondent: **Mr. V.K. Verma and Mr. Ashok Chaudhary, Additional Advocate Generals.**

Surjit Singh, J (oral)

Heard and gone through the record.

The appellant-plaintiff filed a suit for declaration that land measuring 103 kanals 1 marla, situate in Mouza Jangal Ropa, Tehsil and District Hamirpur and entered against Khata No.39 min, Khatauni No.49 min, in the jamabandi for the year 1982-83, pertaining to the said mouza, had not vested in the state, i.e. the respondent-defendant under the provisions of the Himachal Pradesh Village Common Lands (Vesting and Utilisation) Act, 1974, and that the mutation sanctioned by the Revenue Officer vesting the said property in the State, was illegal and void.

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[1] ***Whether the reporters of Local Papers may be allowed to see the judgement?***

By way of further relief, issuance of permanent prohibitory injunction restraining the functionaries of the respondent-defendant from causing interference in plaintiff's possession, was sought.

It was alleged that initially the suit land was Shamlat Tikka and it had been in possession of the plaintiff and prior to him his predecessor since the year 1920 on account of their being the members of the village proprietary body. It was alleged that the land had neither vested in the Panchayat under the Punjab Village Common Lands (Regulation) Act, 1961 (the area where the suit property is situate was earlier part of the erstwhile State of Punjab and it merged with the Himachal Pradesh on the re-organisation of that State in the year 1966), nor had it vested in the State of Himachal Pradesh under the Himachal Pradesh Village Common Lands (Vesting and Utilisation) Act, 1974. It was alleged that the concerned revenue officer had initiated proceedings under Section 163 of the H.P. Land Revenue Act for the ejectment of the appellant-plaintiff from the suit land without any jurisdiction and the proceedings were, therefore, illegal, void and of no consequence.

Respondent-defendant contested the suit and pleaded that the suit land was common land and it had vested in the Panchayat under the Punjab Village Common Lands (Regulation) Act, 1961 and mutation to that effect had also been sanctioned on 21.1.1972 and that after the coming into force of the Himachal

Pradesh Village Common Lands (Vesting and Utilisation) Act, 1974, it vested in the State under Section 3(1)(a) of the said Act and that the possession had also been taken over by the State after the vestment of the land in it.

The trial Court dismissed the suit holding that the suit land had vested in the Panchayat under the Punjab Act and thereafter when the Himachal Act came into force, it vested in the State of Himachal Pradesh. With these findings, the suit was dismissed. Appellant went in appeal to the Court of District Judge. The learned District Judge held that though the suit land had vested earlier in the Panchayat under the Punjab Act and thereafter in the State of Himachal Pradesh under Section 3(1)(a) of the Himachal Act, yet the appellant-plaintiff had remained in possession of a portion of the suit land to the extent of 9 Kanlas 10 Marlas entered against Khata No.39 min, Khatauni No.51, Khasra Nos.36, 52, 82 and 640 throughout and unless he was shown to have earlier been evicted under the provisions of Section 3(5) of the Himachal Act read with Rule 3 of the Himachal Pradesh Village Common Lands (Vesting and Utilisation) Rules, 1975, Section 163 of the H.P. Land Revenue Act, could not have been pressed into service. With these findings, the learned District Judge partly accepted the appeal and granted an injunction restraining the respondent-defendant from causing any interference in the above said 9 kanals 10 marls land except by

following the procedure prescribed under sub-section (5) of Section 3 of the H.P. Village Common Lands (Vesting and Utilisation) Act, 1974 and the Rules framed under the said Act.

The appellant-plaintiff feeling aggrieved even by the aforesaid findings and decree of the first appellate Court, came to this Court. The appeal was admitted by this Court on the following substantial questions of law:-

> "1. Whether on proper construction of oral and documentary evidence, particularly the revenue records from 1923-24 to 1973-74 and in the absence of notices to the appellant, for ejectment, it could be assumed that the appellant has ceased to be the owner and the land has vested in the Government?
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> 2. Whether from the revenue record to which a presumption of truth is attached, a presumption as to the continuity of possession of the appellant on the land in dispute could be raised and it could be assumed that the appellant has ceased to be the owner of the property?
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> 3. Whether the Court below has drawn wrong inference from the facts proved on record and the findings are vitiated because of misreading and misconstruction of oral and documentary evidence, particularly statement of PW-4 and Jamabandis P-4 to P-14?
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> 4. Whether a Civil Court had the jurisdiction to decree the suit for declaration and injunction and the provisions of the H.P. Village Common Lands (Vesting and Utilisation) Act have been misconstrued?"

It has been submitted on behalf of the appellant-plaintiff that the suit land never vested in the Panchayat nor could it have lawfully vested in the

State under the Punjab Village Common Lands (Regulations) Act, 1961, and if that is so, the question of its vestment in the State of Himachal Pradesh did not arise. In the alternative, it is submitted by the learned counsel that the first appellate Court ought to have granted the injunction in respect of the whole of the suit property instead of only a portion of it to the extent of 9 kanals 10 marlas.

In support of the main submission, the learned counsel drew the attention of the Court to Section 2(g) of the Punjab Village Common Lands (Regulations) Act, 1961, particularly clauses(iii) and (viii) of its Clause (5) which pertain to the lands which are excluded from the definition of '*Shamilat deh*'.

Per sub-clause (iii) of Clause (5), land which had been partitioned and brought under cultivation by individual land holders before 26th January, 1950, is saved from vestment. In the instant case, it is not the case of the appellant-plaintiff that the land had been partitioned and brought under cultivation by individual land holders before 26th January, 1950. Hence, the exception contained in sub-clause (iii) of Clause (5) of sub-section 2(g) is not attracted.

Even sub-clause (viii) of the aforesaid clause is not attracted because as per this sub-clause that 'Shamilat Deh' is saved from the vestment in the

Panchayat, which was assessed to land revenue and had been in the individual cultivating possession of co-sharers not being in excess of their respective shares in such 'Shamilat Deh' on or before the 26th day of January, 1950. In the instant case, initially only a very small portion of the suit land to the extent of 2 kanals 10 marlas was recorded in possession of Shri Prabha, the predecessor of the appellant-plaintiff as a co-sharer. The fact is borne out from the jamabandis for the years 1919-20 to 1931-32, copies Exts. P-3 to P-6. Thereafter said Prabha was shown to be in possession of 5 marlas more area comprised in Khasra No.2 min. This way, the total area in his possession rose from 2 kanals 10 marlas to 2 kanals 15 marlas. This position is borne out from the jamabandis for the years 1935-36 to 1943-44, copies, Exts. P-7 to P-9. In the jamabandi for the year 1951-52, which is supposed to have been finalized in March/April, 1952, possession of said Prabha is recorded over 4 kanals 5 marlas and the Khasra numbers are the same as mentioned in the previous jamabandi, but the area of Khasra No.2 min, is shown to be 1 kanal 15 marlas instead of 5 marlas, as recorded in the previous jamabandi. There is nothing on the record that this addition of Khasra No.2 min, was made prior to 26th January, 1950. Therefore, the assumption would be that on 26th January, 1950, the cut off date mentioned in sub-clause (viii) of Clause (5) of sub-section 2(g), the appellant-plaintiff's predecessor

Prabha was in possession of 2 Kanlas 15 marlas area. Even in respect of this 2 kanals 15 marlas area a finding cannot be returned that this was saved from vestment in the Panchayat because there is nothing on record suggesting that this area of 2 kanals 15 marlas was not in excess of the share of Prabha in Shamilat land.

In view of the above stated position, the contention that the land had not vested in the Panchayat under the Punjab Act, merits rejection and the same is accordingly rejected.

It was then submitted by the learned counsel representing the appellant-plaintiff that Himachal Pradesh Village Common Lands (Vesting and Utilisation) Act, 1974, has been amended by Act of 2001, whereby clause (d) has been added to sub-section (2) of Section 3 of the Act and this addition has been brought into force from the date of the enforcement of the principal Act itself. It is true that an amendment has been carried out as submitted by the learned counsel for the appellant and some land has been exempted from vestment by addition of sub-clause (d) to sub-section (2) of Section 3. The position can be understood and appreciated only if the provisions of sub-section (1) and sub-section (2) of Section 3 of the Himachal Pradesh Village Common Lands (Vesting and Utilisation) Act, 1974 are gone through. Therefore, the same are reproduced below for ready reference:-

"**3. Vesting of rights in the State Government**(1) Notwithstanding anything to the contrary contained in any other law for the time being in force or in any agreement, instrument, custom or usage or any decree or order of any court or other authority, all rights, title and interests including the contingent interest, if any, of the landowner in the lands in any estate-

(a) vested in a Panchayat under section 4 of the Punjab Village Common Lands (Regulation) Act, 1961 (18 of 1961) as in force in the areas added to Himachal Pradesh under section 5 of the Punjab Re-organization Act, 1966 (31 of 1966) except lands, used or reserved for the benefit of village community including streets, lanes, playgrounds, school, drinking wells or ponds within abadi deh or gorah deh;

(b) described in the revenue records as shamlat taraf, patties, pannas, thola, shamlat, shamlat deh, shamlat chak, shamlat tika or by any such other description and not used according revenue records for the benefit of the community in the village or a part thereof or for common purposes of the village in the areas added to Himachal Pradesh under section 5 of the Punjab Re-organisation Act, 1966; and

(c) "described in the revenue records as shamlat, shamlat deh, shamlat taraf, shamlat chak, patti or by any other such description in the areas comprised in Himachal Pradesh immediately before 1st November, 1966;

Shall stand extinguished and all such rights, title and interests shall vest in the State Government free from all encumbrances.

(2) The provisions of sub-section (1) of this section shall not apply to land described in clauses (b) and (c) of that

sub-section if, before the date of commencement of this Act-

(a) Partition of such lands is made by the individual co-sharers through a process of law by a competent Court or authority;

(b) transfer of such lands is made by the landowner by way of sale gift or exchange;

(c) such land built upon by an inhabitant by raising a residential house or cow shed.

(d) Land recorded as "shamlat tika Hasab Rasad Malguzari" or by ay such other name in the ownership column of jamabandi and assessed to land revenue and has been continuously recorded in cultivating possession of the co-sharers so recorded before 26th January, 1950 to the extent or their shares therein:

Provided that the provisions of this clause shall not be applicable to such land which have already been put to use by the Government."

The case in hand is covered by clause (a) of sub-section (1) of Section 3, because earlier the land had vested in the Panchayat under the Punjab Village Common Lands (Regulation) Act. As per red ink note recorded in the remarks column of Jamabandis for the years 1968-69 and 1973-74, copies Exts.P-13 and P-14, the date of mutation is 21.1.1972. If that is so, the vestment of the land in the State under the H.P. Village Common Lands (Vesting and Utilisation) Act, 1974, is under the provisions of clause (a) of sub-section (1) of Section 3 of the said Act and, therefore, clause (d) added to sub-section (2) of Section 3 of the Act by way of amendment of 2001, is

not applicable, as the said clause is applicable to the lands which have vested in the State directly from the village proprietary body and not via Panchayat under the Punjab Village Common Lands (Regulation) Act.

It was then submitted on behalf of the appellant that mutation of vestment of land in the Panchayat was attested under the provisions of Punjab Act in the year 1975 when the Act stood repealed by Himachal Act. He referred to Ext.D-15, copy of mutation order. This submission is not even factually correct because Ext.D-15 pertains to some land other than the suit land.

The alternative submission is also without merit because so far as the rest of the suit property, i.e. the property other than 9 kanals 10 marlas is concerned, the appellant-plaintiff or his predecessor are not shown to be in exclusive possession thereof in any jamabandi from 1919-20 till date, which are available on record. It is the proprietary body which is shown to be in possession as a community.

As a result of the above discussion, all the aforesaid substantial questions of law are answered against the appellant-plaintiff and the appeal is dismissed.

May 7, 2007 **(Surjit Singh)**
(ss) **Judge**